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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 665

A. H. BULL STEAMSHIP CO.,

Petitioner,

against

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO; NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO; and INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, INC. AFL-CIO,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

A. H. Bull Steamship Co. ("Bull" herein) petitions for writs of certiorari to review two judgments of the United States Court of Appeals for the Second Circuit filed November 21, 1957 (R. A 85; 142a).[1]

Opinions Below

Separate suits were instituted by Bull as plaintiff in the District Court for the Eastern District of New York. The

[1] The mandates of the Court of Appeals were stayed pending final disposition of this petition by this Court's order (per Mr. Justice Harlan) of December 5, 1957.

first case in point of time was brought against respondent Seafarers' International Union ("SIU" herein) and is referred to as the "SIU case." Thereafter, a second action was commenced against respondents National Marine Engineers' Beneficial Association and International Organization of Masters, Mates & Pilots, Inc. ("MEBA" and "MMP" respectively) which is referred to herein as the "officers' case."

None of the opinions below has as yet been officially reported. The opinion of the District Court of September 27, 1957, in the SIU case is printed at pages A 59 A 68 of the Joint Appendix below and in Appendix A, *infra*, pages 21-28. That Court's opinion of October 17, 1957, in the officers' case is printed at pages 112a-120a of the Appendix below and in Appendix A, *infra*, pages 29-36.[2]

The opinions of the Court of Appeals of November 21, 1957, in both cases and its *per curiam* opinion of November 27, 1957, are printed in Appendix A, *infra*, pages 37-48, 49-60 and 61, respectively.

Jurisdiction

The judgments of the Court of Appeals were entered November 21, 1957. Rehearing was not requested of that Court.

Jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1). A single petition for certiorari to review both cases is authorized by Rule 23(5) of this Court and deemed here appropriate in view of the questions common to both cases.

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[2] The Appendices used below comprise virtually the entire record in each case before the District Court. Page references to the gray-covered Joint Appendix filed in the SIU appeal are preceded with an upper case "A". Page references to the blue-covered Appendix filed in the appeal of the officers' case below are followed with a lower case "a".

Questions Presented

A. In Both Cases:

1. Do District Courts, in suits under Section 301 of the Labor Management Relations Act of 1947, 29 U. S. C. § 185, lack jurisdiction because of the Norris-LaGuardia Act to restrain a labor organization from (a) violating the "no-strike" clause of a valid and existing collective bargaining agreement, and (b) refusing to perform its affirmative undertakings in said agreement such as the undertakings here to supply sea-going personnel on call?

B. In the Officers' Case:

2. Can suits for violations of collective bargaining agreements made on behalf of supervisory employees be brought under Section 301 of the Labor Management Relations Act?

3. In view of the withdrawal of collective bargaining rights from "supervisors" by the Labor Management Relations Act, are federal courts precluded by § 4 of the Norris-LaGuardia Act from enforcing by injunction no-strike clauses and undertakings to furnish personnel contained in agreements between employers and unions representing supervisors?

C. As to MEBA:

4. Is the doctrine of "pendent jurisdiction" applicable in advance of trial and without the taking of evidence upon an application for provisional relief where the federal claim upon which jurisdiction is based raises a substantial question of law?

Statutes Involved

The statutes involved are Sections 1(b), 301 and 501(3) of the Labor Management Relations Act of 1947, 29 U. S. C. §§ 141(b), 142(3) and 185; Sections 1, 2(3), 2(5), 2(7),

2(11) and 14 of the National Labor Relations Act, as amended, 29 U. S. C. §§ 151; 152(3), (5), (7), (11) and 164; and Sections 1, 2, 4, 7 and 13 of the Norris-LaGuardia Act, 29 U. S. C. §§ 101, 102, 104, 107, and 113. These statutes are printed in Appendix B, *infra*, pp. 62-70.

Statement of Case and Disposition Below

Petitioner Bull, a Delaware corporation, owns and operates a fleet of American-flag, ocean-going, dry cargo vessels in intercoastal and foreign commerce. Of particular moment in the controversy at bar is its regular general cargo service between the Commonwealth of Puerto Rico and various East Coast ports, primarily New York, Philadelphia and Baltimore.

Respondent SIU is an unincorporated labor organization which acts as collective bargaining representative for the unlicensed merchant seamen employed aboard Bull's vessels. Respondents MEBA and MMP similarly represent Bull's licensed engineering and deck officers respectively. Unidentified members of MEBA, an unincorporated association, are alleged to reside in Delaware (34a). MMP, on the other hand, is a non-profit membership corporation organized under the laws of New York (110a-111a).

For many years, relations between Bull and each of the respondents have been governed by formal collective bargaining agreements which, in the case of SIU, have since 1940 included a specific, unqualified and unconditional "no-strike" clause (A 9). Similar no-strike clauses are contained in the officers' contracts (11a-12a). The current SIU agreement, executed in October of 1956, will not expire, by its terms, until September 30, 1958; the MEBA agreement expires June 15, 1958, and that of MMP on September 30, 1958.[3]

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[3] Copies of these extensive agreements (not printed in the Appendices) were handed up in the court below and have been separately certified to this Court as exhibits to the record. The relevant provisions of all three agreements appear, *passim*, in the affidavits of record and are collected in Appendix C, *infra*, pp. 71-76.

Thus, Article II, Section 4, of the SIU agreement flatly declares: "There shall be no strikes, lockouts or stoppages of work while the provisions of this agreement are in effect." Similar provisions appear in the officers' contracts. In addition, each respondent is affirmatively obligated to furnish Bull with qualified personnel as and when required. Finally, each agreement permits either party thereto to reopen for changes in the wage scale and other monetary matters at times prior to termination.[4]

In the spring of 1957, the three respondent unions served upon all shipping companies which they have under contract notices of their intent to reopen for wage negotiations (A 12; 12a). Ensuing negotiations resulted generally in MEBA and MMP securing a 6% wage increase for their members, this increase being equivalent to the increase simultaneously secured by the National Maritime Union, SIU's principal competitor, on behalf of all NMU seamen. At every stage, Bull declared its willingness to pay its seagoing employees precisely the same increased wages gained by other maritime unions for their members and by MEBA and MMP with every other shipping company under contract and now constituting the industry patterns. None of the respondents, however, would agree to accept this new industry pattern from Bull and refused all offers by Bull to arbitrate or mediate any genuine wage dispute (A 10-A 13; 12a-14a). SIU admitted below that its strike was, at least in part, another battle in its labor war against one of the stockholders of Bull's parent company, SIU's "avowed labor enemy" (A 25-A 26). That similar considerations have prompted the officers is apparent (13a-14a; 38a).

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[4] As found by the District Court (A 61), SIU's right to open negotiations for changes in the wage scale or any monetary matters could not serve to terminate either the agreement itself or the no-strike covenant thereof inasmuch as the agreement's preamble provides that "[a]pplications by either party to open negotiations for changes in the wage scale . . . shall not be deemed cause for termination of this agreement." In the officers' case, it was found that in neither agreement was the no-strike clause qualified by the wage reopener (114a).

On August 19, 1957, SIU called a strike against Bull at its Brooklyn Terminal and, on September 11th, extended the strike to Puerto Rico completely tying up Bull's Puerto Rican service. MEBA and MMP also struck at those ports and later refused to clear personnel at other locations thereby effectively paralyzing virtually all of Bull's operations (15a-16a). As found by the District Court (A 61; 114a), respondents' strike activities caused Bull irreparable injury for which it had no adequate legal remedy.

Bull, on September 16, 1957, instituted suit against SIU in the District Court under Section 301 of the Labor Management Relations Act for declarative, injunctive and damage relief (A 2-A 5), and, on the authority of *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448 (1957), *Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30 (1957), and other recent decisions of this Court, moved for an injunction *pendente lite*.

Upon the facts stated above, the District Court (per Bruchhausen, D. J.), ruling that SIU had in fact breached its agreement (A 60-A 61), entered an order upon Bull's motion which, effective October 1, 1957, (a) enjoined further picketing or strike activities by SIU and all persons in active concert or participation with it, and (b) specifically ordered SIU to comply with its contractual obligation to furnish seamen as Bull might require (A 69).

While the order was ostensibly effective October 1st, SIU on that date merely removed its pickets. It furnished no seamen (R. A 95-A 96). Picketing by the two officer unions continued at Brooklyn and was instituted at Puerto Rico necessitating a second suit (2a-8a; 15a) and, again upon finding contract violations, the District Court issued a similar injunction October 21, 1957, against the officer unions (121a-122a). With the entry of this second order, all unions, including SIU, began supplying men and Bull's service as a common carrier resumed.

The two actions proceed from the same overall controversy and present substantially similar facts which are not at this stage in dispute. In both actions, federal jurisdic-

tion is invoked under the Labor Management Relations Act, Sec. 301(a). In the officers' case diversity jurisdiction is alternatively pleaded (2a-3a). Diversity is now conceded as to MMP but disputed as to MEBA (115a).

The District Court dealt with the strikes called by these unions for what they plainly were: deliberate, wilful, violations of valid existing collective bargaining agreements. This holding of the District Court was not upset by the Court of Appeals which did not reach the question of breach of contract.

The District Court reviewed and accepted the responsibilities imposed upon it by Congress with the enactment of Section 301 and recognized by this Court last June in *Textile Workers Union* v. *Lincoln Mills, supra,* 353 U. S. 448. Cf. *Allen Bradley Co.* v. *Local No. 3,* 325 U. S. 797, 806 (1945). These responsibilities, in its view, entailed the reconciliation—or, in the language of this Court in *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. R.,* 353 U. S. 30, 40 (1957), the "accommodation"—of the policies underlying Section 301 and those of the Norris-LaGuardia Act. Reviewing the legislative history, it found the primary objective of Norris-LaGuardia was to assist workers to organize and achieve parity at the bargaining table—see 29 U. S. C. § 102—and that the avowed aim of Congress in adopting Section 301 fifteen years later, was to promote industrial peace by the mutual enforceability of labor contracts.[5] The District Court concluded that this purpose of Section 301 could not be accomplished without the grant of injunctive relief where legal remedies are not adequate.

The Court of Appeals reversed, posing "the real issue" as "whether or not there had been a repeal by implication of the Norris-LaGuardia Act." Without considering the declared policy of that Act (29 U. S. C. § 102), it held the literal requirements of that Act (*Id.,* § 104, 107) to be

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[5] 61 Stat. 136; 29 U. S. C. § 141(b). See, e. g., Sen. Rep. No. 105, 80th Cong., 1st Sess., pp. 15-18; H. R. Cong. Rep. No. 510, 80th Cong., 1st Sess., p. 42.

paramount to all other considerations of national labor policy and to deny the District Court power to restrain strike activities in "labor disputes" (*Id.*, § 113) irrespective of whether such strike activities violated a collective bargaining agreement. Conceding that this Court's decision in *Lincoln Mills, supra,* "does clearly hold that . . . [Sec. 301] . . . gives substantive rights grounded in a body of federal law which in a proper case may be enforced by equitable relief," the Court of Appeals found *Lincoln Mills* (and, accordingly, also the Railway Labor Act cases which preceded that decision and are cited at p. 458 thereof) to be completely inapplicable to the present situation. Hence it held these cases to be governed by its earlier decision in *Alcoa S. S. Co.* v. *McMahon,* 173 F. 2d 567 (1954) cert. den. 338 U. S. 821, and the First Circuit's decision in *W. L. Mead, Inc.* v. *International Brotherhood of Teamsters,* 217 F. 2d 6 (1954) and its later dictum in *Local 205, etc.* v. *General Electric Co.,* 233 F. 2d 85, aff'd *sub nom General Electric* v. *Local 205,* 353 U. S. 547.[6]

In achieving this result, the Court of Appeals specifically rejected all recourse to "judicial legislation or inventiveness." Thus, it turned its back, so to speak, on the pattern established by this Court in the Railway Labor Act cases and its concrete direction in *Lincoln Mills* to "fashion" a body of federal law "from the policy of our national labor laws" which, in turn, was coupled with an express invitation to the federal courts to employ "judicial inventiveness" tailored to the nature of the problem. 353 U. S. at pages 456-7. No such approach is anywhere evident in the Court of Appeals disposition of the principal problem in both these cases. It is this problem which is the substance of the first Question Presented, *supra,* p. 3.

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[6] However, the Court of Appeals did not discuss the rationale of this Court's affirmance of *Local 205* (decided with *Lincoln Mills*). It is submitted that Judge Magruder's reasoning was not accepted in its entirety since this Court found it necessary to "follow in part a different path" indicating that the "different path" had been charted for federal courts generally in *Lincoln Mills.* See 353 U. S. at p. 548.

The second and third Questions Presented, *supra*, p. 3, grow out of the contentions by both unions in the officers' case that, since their members employed by Bull are "supervisors," they are not "labor organizations" subject to Section 301 but are, nevertheless, entitled to the protection of the Norris-LaGuardia Act.

The District Court found it unnecessary to resolve the first of these two questions, holding that if Section 301 applied the case was governed by its previous decision in the SIU case and that if these unions were supervisory unions they were denied the protection of Section 4 of the Norris-LaGuardia Act by Section 14 of the National Labor Relations Act, as amended, (29 U. S. C. § 164).

The Court of Appeals, answering Question 2, held that Section 301 is not applicable to collective bargaining agreements executed on behalf of a unit of supervisors. While holding that "the whole thrust of the supervisor provisions" in the 1947 amendment to the National Labor Relations Act was "to remove supervisors from the operation" of that Act, the Court of Appeals nevertheless held that such supervisors are employees so far as Norris-LaGuardia is concerned and, accordingly, their strike activities are protected by that Act.

The fourth Question Presented, *supra*, p. 3, arises out of MEBA's contention that there was a lack of diversity as to it in that certain of its members were resident in Delaware, the state of Bull's incorporation. The District Court did not pass upon this question of fact but held that the substantial federal claim asserted by Bull under Section 301 gave it "pendent jurisdiction" over Bull's entire cause of action under *Hurn* v. *Oursler*, 289 U. S. 238. Again following *Lincoln Mills, supra*, it issued a preliminary injunction.

While conceding the existence of a question of fact as to the supervisory status of MEBA members, the Court of Appeals held that the doctrine of pendent jurisdiction is a mere rule of judicial economy and not applicable in advance of trial on a motion for provisional relief.

It is submitted that the above rulings of the Court of Appeals have brought its decisions into conflict with decisions of other federal courts. See, *infra*, pp. 12-17.

These considerations, we further submit, persuasively demonstrate not only "the importance of the questions raised in this appeal" but "also that the questions are not free from doubt." See the *per curiam* opinion of the Court of Appeals, Appendix A, *infra*, p. 61.

Reasons for Granting the Writs

A.

These cases present questions which are of vital importance to the administration of our national labor laws. Congress, in enacting § 301, has declared that the execution of a collective bargaining agreement shall be a meaningful act. This Court, in *Lincoln Mills, supra*, has now directed federal courts to develop and apply a substantive body of federal law fashioned from the policy of our national labor laws to govern the relations of the parties to such agreements. 353 U. S. at p. 456. So far as we can determine this is the first case to arise since *Lincoln Mills* in which it can be said that the provisions, though not the policies, of the Norris-LaGuardia Act and of the more recent Labor Management Relations Act of 1947 are in conflict. The courts below have now successively differed in determining the respective policies of these statutes and in applying them to these cases.

Underlying the specific questions presented there is, moreover, the broader question of whether, in accommodating the complementary purposes of our various labor laws, the federal courts are to confine themselves to a strict and literal reading of the particular provisions of those laws or whether they are to follow "the different path" of accommodating and reconciling their broader purposes, the declared policies of Congress in enacting those laws.

In view of the prevalence of no-strike clauses in modern collective bargaining agreements and the fact that such clauses are often the primary consideration secured by employers in the collective bargaining process, questions as to the enforceability of such clauses are of widespread significance. In these cases, and we submit in many others, such clauses can be effectively enforced only through the use of injunctive powers.

A decision that such powers are not available in carrying out the Congressional purpose to secure industrial peace through the mutual enforceability of collective bargaining agreements, should not go unreviewed.

As noted, there is also presented in the officers' case a fundamental question as to the position of supervisors under our national labor laws.

These cases are also of transcendent importance to the economy of the Commonwealth of Puerto Rico inasmuch as Bull, a common carrier, is its chief link to the American East Coast, carrying in excess of 80% of all general cargo outbound from Puerto Rico to New York and other East Coast ports and in excess of 60% of all shipments originating on the East Coast for Puerto Rico. See R. A 91-A 93 and Bull's stay application to this Court filed December 3, 1957.

It is, we submit, in the public interest that this Court settle these questions at this stage, not only because of the unquestionable impact which the decisions of the Court of Appeals will have in other situations but also because of their impact on the future conduct of this litigation. The interlocutory nature of the orders sought to be reviewed should not, in this case, militate against granting certiorari. See *Larson* v. *Domestic & Foreign Group*, 337 U. S. 682 (1949); *Deckert* v. *Independence Shares, Inc.*, 311 U. S. 282 (1940); and, for a case arising in connection with interlocutory orders in a labor context, *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437 (1948). In any event, the decisions below effectively and, for all practical purposes, finally dispose of Bull's claim for injunctive relief.

B.

1. The decisions of the Court of Appeals below are believed erroneous and in conflict with the principles of applicable decisions of this Court, namely, *Textile Workers Union* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (decided June 3, 1957); *Syres* v. *Oil Workers Union,* 350 U. S. 892 (1955); *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. R. Co.,* 353 U. S. 30 (1957); *Graham* v. *Brotherhood of Firemen and Enginemen,* 338 U. S. 232 (1949); and *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515 (1937).

Although the attention of the Court of Appeals was directed to all of the foregoing cases, only *Lincoln Mills* was treated in the opinions and, as noted, the teaching of that decision was not followed. The *Alcoa, Mead* and other decisions upon which the Court of Appeals did rest its opinion are clearly distinguishable in that in none of those cases was the violation of a no-strike clause involved.

This Court has found that Section 301 "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations, and that industrial peace can be best obtained only in that way." *Textile Workers Union* v. *Lincoln Mills of Alabama,* 353 U. S. at p. 455. The Court recognized that variations of Congressional policy are embodied in our different labor laws and pointed out how, in the past as well as in *Lincoln Mills* itself, these divergent, if not conflicting, statutes were to be reconciled or "accommodated." See Justice Douglas' opinion for the Court, at pages 457-459, discussing the earlier cases under the Railway Labor Act, and compare *General Electric Co.* v. *Local 205,* 353 U. S. 547, handed down with *Lincoln Mills.* See also *Trainmen* v. *Chicago River & Indiana R. R. Co.,* 353 U. S. 30, 40-42, decided March 25, 1957, rehearing denied, *id.,* p. 948.

Thus it has been established that, Norris-LaGuardia notwithstanding, the injunctive remedy is available to secure statutory rights to non-discriminatory representation both

under the Railway Labor Act (in *Graham* and *Virginian Railway, supra*) and the National Labor Relations Act (in *Syres, supra*). It has also been held (in *Chicago River, supra*) that, under the Railway Labor Act, a federal court may properly enjoin a strike in order to effectuate the Congressional purpose of securing the enforcement of the collective bargaining agreements of railroad employees.

Just as Congress has selected arbitration as the chosen instrument for the resolution of "minor disputes" in the railroad industry, so it has selected litigation as the means to resolve claims of violations of collective bargaining agreements generally. Thus, the cases at bar bring Section 301 to the same crossroads to which the Railway Labor Act came in *Chicago River, supra.* Without injunctive powers, federal courts simply cannot enforce collective bargaining agreements; damages are not a practical alternative especially in the case of a common carrier (see the Seventh Circuit's opinion in *Chicago River,* 229 F. 2d 926 at 932 affirmed, *supra,* 353 U. S. 30).

Nevertheless the Court of Appeals has ruled that the provisions of Norris-LaGuardia are, for all purposes, paramount and, absent an express repeal or amendment of that statute, they must prevail against the later policy expressed in Section 301 to render collective bargaining agreements enforceable in the federal courts. Thus the Court of Appeals rejected *Lincoln Mills.* It refused to recognize as an alternative to repeal of Norris-LaGuardia the accommodations of the policies of that Act and of the National Labor Relations Act. In the Railway Labor Act cases, the courts did not shrink from such an accommodation. Nor did this Court in *Lincoln Mills.* There is a vast difference between exercising "judicial inventiveness" (*Lincoln Mills,* p. 457) to fashion a body of law consonant with the policies of both Acts and concluding that the exercise of such inventiveness is inappropriate if it would result in an apparent *pro tanto* repeal of the earlier statute. There is involved here no question of repeal by implication. Rather the question is how to accomplish the purposes of both Acts. The net effect

of the Court of Appeals' avoidance of *Lincoln Mills* is that collective bargaining agreements are not enforceable where a union not only ignores its affirmative obligations but goes further and breaches its no-strike covenant. Therefore, these cases speak as compellingly for the grant of certiorari as did *Lincoln Mills* or the comparable cases under the Railway Labor Act.

Given the thesis that a union may expressly contract away its right to strike for economic benefits (See, e. g., *Mastro Plastics Corp.* v. *Labor Board,* 350 U. S. 270, 279-280 [1956]; cf. *Labor Board* v. *Lion Oil Co.,* 352 U. S. 282, 293 [1957]) coupled with the declared Congressional policy, embodied in Section 301, of promoting industrial peace through mutual enforcement of collective bargaining agreements, we come to the crux of this case: Does the Norris-LaGuardia Act render federal courts powerless to compel a union to perform its contractual obligations when it deliberately goes beyond breaching its affirmative obligations and, in addition, declares a strike which, in turn, is expressly outlawed by contract?

In returning an affirmative answer to this question, the Court of Appeals stressed Congress' purpose, evidenced by Norris-LaGuardia, to encourage collective bargaining; it largely ignored its later concern, expressed in Section 301, to enforce the agreements which eventuate from the bargaining process. It is to this Court that we must now turn for a definitive reconciliation of the policies and purposes of both statutes.

2. Of almost equal importance is the question, raised in the officers' case, whether supervisors' unions which enter into collective bargaining agreements with employers are entitled to the benefits, and must accept the burdens, of Section 301. The Court of Appeals has answered this question by rigidly applying the statutory definitions. Cf., National Labor Relations Act, as amended, §§ 2(3), (5), (11), and 14, 61 Stat. 137-8, 151; Labor Management Relations Act, 1947, § 501(3); 61 Stat. 161. Its decision, if accepted in all its generality, would mean that these defini-

tions must be so applied wherever the defined terms appear in the Act.

So viewed, its decision is in conflict with the decision of the Fifth Circuit in *W. T. Smith Lumber Co.* v. *NLRB,* 246 F. 2d 129, 131-2 (1957) following *International Rice Milling Co.* v. *NLRB,* 183 F. 2d 21, 24-5, reversed on other grounds, 341 U. S. 665 (1951). There the Fifth Circuit refused to construe the term "employees" as it appears in Section 8(b)(4)(A) of the Act to exclude railroad workers although railroad workers would appear to be excluded by the express language of Section 2(3) in precisely the same manner as "supervisors" are excluded.

We submit that the clause in Section 301(a) ". . . as defined in this Act . . ." must be limited to the immediately preceding phrase, "in an industry affecting commerce", inasmuch as the term "affecting commerce" is specifically defined in Section 2(7), 29 U. S. C. § 152(7). Cf. Section 301(b), 29 U. S. C. § 185(b). Clearly Congress' concern was to establish a constitutional basis for federal jurisdiction. There is no available evidence that it intended more. Indeed, much of the Act and virtually all of Title III would be rendered anomalous if "employees" is to be read uniformly as excluding "supervisors" as well as the other categories delimited in Section 2(3). For instance, Section 304, 61 Stat. 159, amending Section 313 of the Federal Corrupt Practices Act, 2 U. S. C. § 251, would leave immune from prosecution for the offenses therein defined any "labor organization" which limits its membership to supervisors. A more palpable affront to the Congressional intent can hardly be imagined. Consideration is also invited to the inevitable distortion such a reading gives to the "anti-racketeering" provisions of Section 302 and to the impact upon the private damage actions accorded those injured as a result of secondary boycotts provided in Section 303.

It is submitted, further, that the Court of Appeals also fell into error and, at the same time, brought itself into conflict with the Sixth Circuit's decision in *Labor Board* v.

Edward G. Budd Manufacturing Co., 169 F. 2d 571 (1948), in its holding that the persons covered by the particular contract which is the subject of a Section 301 action must be "employees" as defined in Section 2(3), it being the clear holding of the *Budd* case, 169 F. 2d at pages 576-577, that a union which admits both supervisors and non-supervisors to membership is still a "labor organization" within the meaning of Section 2(5).

3. Norris-LaGuardia was enacted to protect the collective bargaining rights of the "individual unorganized worker" (29 U. S. C. § 102). There is a grave question as to whether a ship's officer can be properly so classified. Cf. *American Medical Association* v. *U. S.*, 130 F. 2d 233, 242, notes 30-32 (D. C. Cir., 1942) aff'd 317 U. S. 519. Even if it be assumed that he can, the question remains as to whether in 1947 Congress, through Section 14(a) of the Labor Management Relations Act, 29 U. S. C. § 164(a), did not remove "supervisors" from the protection of all labor laws, "either national or local, relating to collective bargaining" including Norris-LaGuardia. To date, other than the courts below, no federal court appears to have faced this question but see *260 Madison Avenue Corp.* v. *Nelson*, 284 App. Div. (N. Y.) 254, 131 NYS 2d 426 (1954).

4. Finally, there is tendered as to MEBA the issue of the manner in which the Court of Appeals limited the doctrine of "pendent jurisdiction" as first elaborated by this Court in *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175 (1909) and further expounded in *Hurn* v. *Oursler*, 289 U. S. 238 (1933). The decision of the Court of Appeals below, in denying the applicability of this doctrine to applications for preliminary relief, is in conflict with this Court's decision in *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913).

The doctrine of "pendent jurisdiction" presupposes a complaint setting forth a single claim for relief but asserting two distinct grounds, one federal and one non-federal, as a basis for the relief demanded. In this event, so long

as the federal ground presents a substantial question and is not frivolous or sham, the federal court has jurisdiction of the case for all purposes. If it then eventuates that there is no basis for relief upon the federal ground, the court will nevertheless retain jurisdiction and dispose of the case on the non-federal ground. See *Hurn* v. *Oursler, supra,* at p. 246 *et seq.*

The decision of the Court of Appeals limits the doctrine to those cases—at least to those "labor cases"—where "a federal court in disposing of a federal ground for relief hears evidence concerning the merits of a similar non-federal ground not otherwise subject to its jurisdiction . . ." This analysis, however, excludes cases where the federal ground can be resolved at the outset as a matter of law. As this Court pointed out in *Binderup* v. *Pathe Exchange,* 263 U. S. 291 at p. 305: "Jurisdiction is the power to decide a justiciable controversy, and includes questions of law as well as of fact. . . . Jurisdiction, as distinguished from merits, is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous or, in other words, is plainly without color of merit."

Consonant with this view, this Court has sustained the exercise of pendent jurisdiction in cases where the federal ground has not been considered at all and the cause disposed of on state grounds (e. g., *Siler* v. *Louisville & Nashville R. R. Co., supra*) and in cases where the federal ground has been considered and rejected as a matter of law (e. g. *Louisville & Nashville R. R. Co.* v. *Garrett, supra; Moore* v. *N. Y. Cotton Exchange,* 270 U. S. 593 [1926]). The decision below is in direct conflict with these cases. Moreover if the rule enunciated by the Court of Appeals is to be regarded as a special rule for labor cases only, its decision is in conflict with this Court's holding in *Hurn* v. *Oursler, supra,* p. 245, that the rule of pendent jurisdiction is "a rule of general application."

CONCLUSION

For the foregoing reasons this Petition for Writs of Certiorari should be granted.

Respectfully submitted,

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A. H. Bull Steamship Co.

THEODORE S. HOPE
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JOHN A. MANNING
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December 13, 1957

APPENDIX A

Opinions Below

I. District Court Opinion—SIU Case (R. A 59-A 66):

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A. H. BULL STEAMSHIP CO.,
Plaintiff,
against
SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,
Defendant.

CIVIL NO. 18007
SEPTEMBER 27, 1957

BRUCHHAUSEN, D. J.

The plaintiff, an operator of ships engaged in the transportation business, instituted this action against the defendant, Labor Union, for specific performance of a collective bargaining agreement, entered into between the parties and for other relief. The subject motion is for provisional remedies, enforcing the agreement, pendente lite.

The facts, not in dispute, in substance, are as follows:

1. That the parties entered into a collective bargaining agreement in October 1956, which will not expire by its terms until September 30, 1958.

2. That the agreement and predecessor agreements contain a provision that there shall be no strikes, lockouts or stoppages of work while the provisions of the agreement are in effect.

3. That the defendant shall furnish to the plaintiff capable and competent personnel in ample time to prevent any delay in the scheduled departure of its vessels.

4. That on August 19, 1957, the defendant called a strike against the plaintiff and that the strike has been in existence ever since.

On June 17, 1957, the defendant served upon the plaintiff a notice to open negotiations for a revision of wages and other monetary matters and negotiations were had, which were unsuccessful.

The plaintiff contends that the defendant entered into the negotiations in bad faith and that its motive was to use them to further its attack on American Coal Shipping Inc., which has taken over stock control of the plaintiff. That claim has no particular relevance at this time.

The said collective bargaining agreement fails to clothe the defendant with the right to strike or to breach the agreement for any of the reasons advanced by the plaintiff. The only reference therein to the opening of negotiations for changes in the agreement is that they may be discussed but no right was thereby conferred upon either party to terminate the agreement on that account. The provision so referred to is that "applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

The work stoppages have caused and are causing serious loss, damage and irreparable injury to the plaintiff for which it has no adequate legal remedy.

The principal question herein pertains to the interpretation of certain provisions of the 1932 Norris-LaGuardia Act and of the later act, the Labor Management Relations Act of 1947. The Norris-LaGuardia Act of 1932 (29 U. S. C. 101 et sequa), particularly Section 104 thereof, sets forth in substance that no federal court shall issue any order

restraining a person or persons, involved in a labor dispute, from ceasing or refusing to perform any work, whereas Section 301 of the Labor Management Relations Act of 1947 (29 U. S. C. 185) conferred jurisdiction upon the federal courts in suits for violation of contracts between an employer and a labor organization engaged in interstate commerce, regardless of the amount in controversy or the citizenship of the parties.

It will be recalled that in 1932, during the depth of the economic depression, collective bargaining in the labor field was practically non-existent. The legislative policy, proclaimed in Section 102 of the 1932 Norris-LaGuardia Act was that workers should be unhampered in organizing. It was stated therein that "the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment."

The said 1932 Act was aimed at correcting "existing abuses of the injunctive remedy in labor disputes. Federal courts had been drawn into the field under the guise either of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction." *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Co.*, 353 U. S. 30, 40.

The aforementioned Section 104 of the Norris-LaGuardia Act thus removed jurisdiction that the federal courts possessed, though by circuitous route. Employers, hampered by local law, would work their way into federal courts, before the decision in *Erie Railroad* v. *Tompkins*, 304 U. S. 64, and obtain favorable jurisdiction in Labor disputes, resulting in strike injunctions.

Section 301 of the Labor Management Relations Act of 1947 vested federal courts with jurisdiction to impose certain responsibility upon labor unions which had not theretofore prevailed. The significant element of Section 301 of the said Act was not that unions had the right to resort to the federal courts, since they could always have

done so, if the other jurisdictional requirements were met, just as employers were entitled to do, within the limitations of the 1932 Act, but that in cases involving labor contracts, the federal courts by Section 301 were accorded complete jurisdiction, regardless of the amount involved, or of other jurisdictional requirements, and that in order to make labor unions amenable to such jurisdiction, they could be sued as an entity and money judgments could be enforced against their assets, though not against the assets of the individual members.

The 1932 Norris-LaGuardia Act circumscribed federal jurisdiction, only after other jurisdictional requirements, such as diversity, or amount involved etc., were met. On the other hand, the Labor Management Relations Act of 1947 conferred such jurisdiction.

In situations not involving labor contracts, such as collective bargaining agreements, employers are governed by local law as well as by the Norris-LaGuardia Act. However, by the enactment of the Labor Management Relations Act of 1947 and particularly Section 301 the Congress extended the jurisdiction of the federal courts, without reservation, to labor contract disputes whereas in the earlier 1932 Act, it limited such jurisdiction, as stated in Section 104, despite compliance with the other jurisdictional requirements. The said Section 104 constituted a complete restriction, not only as to labor contract controversies but also as to numerous other labor suits instituted in the federal courts.

In the interest of industrial peace, the federal courts under the 1947 Act were given jurisdiction of labor contracts without reservation or denial of any of their other inherent or traditional powers, legal or equitable. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448.

Labor was not thereby stripped of its primary weapon without the substitution of any reasonable alternative.

Brotherhood of Railroad Trainmen et al. v. *Chicago River & Indiana R.R. Co., supra.*

That the primary objective of the 1932 Norris-LaGuardia Act was to aid workers in their efforts to organize and enter into collective bargaining agreements, rather than the consideration of the rights and remedies of the parties thereunder, subsequent to the execution of such agreement, is emphasized in the latter mentioned case, wherein the Court said:

> "The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining."

A principal purpose of the more recent Act, the Labor Management Relations Act, 1947, not contemplated by the Norris-LaGuardia Act, was the enforcement of collective bargaining agreements. It provides that "suits for violation of contracts between an employer and a labor organization • • • may be brought in any district court of the United States • • •." (Section 301(a)).

In the recent case of *Textile Workers of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (decided June 3, 1957), the plaintiff Union invoked the jurisdiction of the federal court under said Section 301 (also referred to as 29 U. S. C. 185) to compel the defendant, the employer, to submit to arbitration, as provided for by the terms of the collective bargaining agreement, entered into between the parties. The agreement also contained a no-strike clause, similar to the one in the case at bar. The Court, in its opinion, quoted from the Senate and House Reports, which preceded the enactment of the statute. It appears in both reports that the primary concern was that unions and employers should both be bound to collective bargaining contracts and be governed by "the usual processes of the law."

The intent and purpose of the proposed legislation, reported by the Senate, quoted in the opinion in the *Textile Workers* case, in substance, is as follows:

1. That the chief advantage which an employer can reasonably expect from a collective labor agreement is the assurance of uninterrupted operation during the term of the agreement.

2. That without some effective method of assuring freedom from economic warfare for the term of the agreement there is little reason why an employer would desire to sign such a contract.

3. That to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts.

4. That Section 185 in the proposed law provides for suits by and against unions as legal entities.

It will be noted that the Senate Committee, so reporting, did not limit faithful performance to any particular breach or to any particular party, committing the breach. It clearly meant to insure faithful performance of the entire agreement to the end that there should be industrial peace. There could be no such assurance if either party, at will, might breach the contract by refusal to perform, and there be no adequate enforcement procedure. Non performance, without the remedy of enforcement, would completely set at nought the object of the statute, as so stated, and render the legislation practically impotent.

The Court in the *Lincoln Mills* case, *supra*, in analysis of the said House and Senate Reports, wrote:

> "Thus collective bargaining contracts were made 'equally binding and enforceable on both parties.' Id., p. 15. As stated in the House Report, supra, p. 6, the new provision 'makes labor organizations equally responsible with employers for contract violations and provides for suit by either against the other in the United States district courts.' To repeat, the Senate Report, supra, p. 17, summed up the philosophy of Section 301 as follows: 'Statutory recognition of the collective agreement as a valid, binding,

and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.' "

In the *Lincoln Mills* case, *supra*, the Court further said:

"Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way. * * *

"Though a literal reading (of provisions of the Norris-LaGuardia Act) might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604) we see no justification in policy for restricting Section 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act. Moreover, we held in Virginian R. Co. *v.* System Federation, 300 U. S. 515, and in Graham *v.* Brotherhood of Firemen, 338 U. S. 232, 237, that the Norris-LaGuardia Act does not deprive federal courts of jurisdiction to compel compliance with the mandates of the Railway Labor Act. The mandates there involved concerned racial discrimination. Yet those decisions were not based on any peculiarities of the Railway Labor Act. We followed the same course in Syres *v.* Oil Workers International Union, 350 U. S. 892, which was governed by the National Labor Relations Act. There an injunction was sought against racial discrimination in application of a collective bargaining agreement; and we allowed the injunction to issue. The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

It is plain that the statute empowers this Court to invoke the remedy of specific performance, also that the undisputed facts presented warrant such procedure. That remedy embraces affirmative as well as negative acts. *Kulukundis Shipping Co.* v. *Amtorg Trading Corporation,* 2 Cir., 126 F. 2d 978.

The plaintiff's motion is granted. The defendant's cross motion is denied. Settle order on two days' notice at which time the parties may submit their proposals as to security and preference of the trial.

/s/ WALTER BRUCHHAUSEN
U. S. D. J.

II. District Court Opinion—Officers' Case (R. 112a-120a):

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A. H. BULL STEAMSHIP CO.,
Plaintiff,
against
NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,
Defendants.

CIVIL NO. 18060
OCTOBER 17, 1957

BRUCHHAUSEN, D. J.

The plaintiff, an operator of ships engaged in cargo transportation, instituted this action against the defendants for specific performance of collective bargaining agreements, made between the plaintiff and each of the defendants. The subject motion is for provisional remedies, enforcing the agreements, pendente lite.

The defendant, National Marine Engineers' Beneficial Association, AFL-CIO is hereinafter called "MEBA."

The defendant, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO is hereinafter called "MMP."

The plaintiff and the defendant, MEBA, as representative of the licensed engineering officers, employed aboard the plaintiff's vessels, entered into a collective bargaining agreement, bearing date June 18, 1955, which by its terms does not expire until June 15, 1958. The agreement provided that "there shall be no strikes, lockouts or stoppages of work during the period of this agreement," also griev-

ance procedure, for the arbitration of all disputes, relating to its interpretation or performance. It also obligated the defendant MEBA to furnish plaintiff on call, and as the plaintiff might from time to time, require, competent and fit licensed officers to serve aboard plaintiff's vessels.

The plaintiff and the defendant, MMP, as the representative of Licensed Deck Officers, other than the Masters of vessels, entered into a similar agreement, bearing date July 1, 1955, expiring on September 30, 1958, which agreement contained an additional provision, viz.:

> "It is understood that in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line."

On or about August 19, 1957 each defendant called a strike against the plaintiff. The strikes have been on ever since.

Prior to the aforesaid work stoppages, negotiations were had, pursuant to wage reopening clauses contained in the agreements. The parties came to no agreement thereon. The plaintiff contends that no dispute then existed between the parties, excepting that the defendants claimed that their members, employed by the plaintiff, had a feeling of insecurity because of fears that the plaintiff's parent corporation, American Coal Shipping, Inc., whose officers were not and are not represented by the defendants, might take over plaintiff's operations, also that the defendants declined to arbitrate the matter. Significantly, MEBA admits that, besides demanding a 6% wage increase, it requested an additional amount for its engineer members "sufficient to compensate them for a possible complete loss of their jobs through the transfer of their vessels to American Coal"

(Exhibit E, attached to affidavit of Herbert L. Daggett, sworn to October 9, 1957). MMP makes a similar admission (affidavit of Charles T. Atkins, October 8, 1957, at page 4). It appears that the plaintiff acquiesced in the 6% wage increase, which had previously been generally adopted in the dry cargo shipping industry.

In neither agreement is the no-strike clause qualified by the wage reopening clause. The defendants, by the terms of the agreements, were not entitled to strike by reason of the collapse of the wage negotiations, whatever the cause.

The work stoppages have caused and are causing serious loss, damage and irreparable injury to the plaintiff for which it has no legal remedy.

As to the Defendants' Claim That the Court Has No Jurisdiction of the Action

The plaintiff, in its complaint, alleged as the basis for jurisdiction the diversity of citizenship of the parties and Section 301 of the National Labor Management Act, 1947 (29 U. S. C. A. 185).

There is complete diversity between the plaintiff, a Delaware corporation, and the defendant, MMP, a New York corporation. This cause of action is separate and apart from the plaintiff's case against the defendant MEBA.

There is some doubt as to whether diversity exists in the action between the plaintiff and MEBA, in that there is evidence that some of the members of MEBA reside in the State of Delaware, the same State wherein the plaintiff was and is incorporated.

This leads to a consideration of the second alleged ground of jurisdiction, the aforesaid Section 301 of the National Labor Management Act, 1947, which vests District Courts with jurisdiction of "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act * * * without respect to the amount in

controversy or without regard to the citizenship of the parties."

The defendant, MEBA, contends that it is not "a labor organization" and the individuals it represents are not "employees," as those terms are defined in the Act, but that they are "supervisors." Section 2(3) of the Act provides that supervisors shall not be deemed employees. Supervisory personnel are in the category of management and, therefore, were and are not within the scope and purpose of the statute.

The plaintiff claims that in various prior proceedings the defendant MEBA made admissions that it was "a labor organization," while, on the other hand, the said defendant challenges those statements or their effect and alleges that the individuals are "supervisors," within the meaning of the Act. As to the present application, it is not necessary to adjudicate these issues, other than to find, as this Court does find that the plaintiff presents a substantial Federal question and that this Court can decide the matter only after it has assumed jurisdiction over the controversy. The complaint herein alleges the violation of a single right, the right to have its agreement performed and a single claim for relief. Under these circumstances, the Court assumes jurisdiction of the action. *Strachman* v. *Palmer*, 177 F. 2d 427; *Hurn* v. *Oursler*, 289 U. S. 238 and *Brown* v. *Haldale Estates, Inc.*, 151 F. Supp. 118.

The defendants further contend, that even if this Court should have jurisdiction of the action by reason of diversity or otherwise, such jurisdiction is controlled or limited by the Norris-LaGuardia Act of 1932 (29 U. S. C. 101 et sequa), particularly Section 104 thereof, which provides, in substance, that a Federal Court may not issue an injunction in a "labor dispute."

At the time of enactment of that law, the country was in the grip of a severe economic depression and collective bargaining was practically non-existent. The legislative policy, proclaimed in Section 102, emphasizing that workers

should be unhampered in their efforts to organize, stated that "the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment." To the same effect is the statement in the recent case of *Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448, viz.:

> "The Norris-LaGuardia Act * * * was designed primarily to protect working men in the exercise of organized, economic power which is vital to collective bargaining."

Clearly, the purpose of the statute was to force employers to bargain collectively with their employees.

Likewise, it is plain that the Congress intended that "Supervisors" should not be governed by that Act, or by any other national or local law in that in Section 14(a) (29 U. S. C. 164(a)) of the National Labor Management Act, 1947, it is stated that "no employer * * * shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

The intent of Congress that supervisory personnel should be regarded as part of the management for the purpose of collective bargaining is disclosed in the report of the House Committee on Education and Labor, H. R. Report No. 345, 80th Congress, First Session, 1947. See also *National Labor Relations Board* v. *Edward G. Budd Manufacturing Co.,* 169 F. 2d 571, 578 and *L. A. Young Spring & Wire Corp.* v. *National Labor Relations Board,* 163 F. 2d 905, 906.

A dispute between an employer and a supervisory union over the terms of employment of its members, therefore, is no more a "labor dispute" than a disagreement between officers of a corporate entity or any other group of employers. See *260 Madison Avenue Corp.* v. *Nelson,* 284 App. Div. 254.

It follows that the Norris-LaGuardia Act does not affect or bar the plaintiff herein.

In the absence of statutory restriction, such as set forth in that Act, a Federal Court has the power to enjoin. *Gomez* v. *United Office and Professional Workers,* 73 F. Supp. 679, 683.

Furthermore, where New York law is applicable, it should be followed by a Federal Court. *Guaranty Trust Co.* v. *York,* 326 U. S. 99. The New York Courts have granted injunctions in cases of violations of no-strike clauses. *Stewart Stamping Corp.* v. *Uprichard,* 133 N. Y. S. 2d 579, order affirmed 284 App. Div. 902; *Bee Line* v. *Long Island Local 252, Etc.,* 157 N. Y. S. 2d 232 and *Schlessinger* v. *Quinto,* 117 Misc. 735, affirmed in 201 App. Div. 487.

In the said *Schlessinger* case in the lower court, Mr. Justice Wagner, later a member of the United States Senate, said:

> "It is elementary, and yet sometimes requires emphasis, that the door of a court of equity is open to employer and employee alike. It is no respecter of persons—it is keen to protect the legal rights of all."

The Appellate Court in sustaining the injunction decree granted by Mr. Justice Wagner, pointed out that the officials of a labor union are obligated to exercise their powers of requiring performance of the contract by the Union members. The Court, on this point, said:

> "Two organizations, one composed of employers and the other of employees, have entered into an agreement. Each had power through the consent of its members to enter into a binding obligation in their behalf. By the constitution or by-laws of each, power is given to the organization to enforce, through disciplinary proceedings which have been demonstrated to be effective, compliance with the terms and conditions to which it has subscribed. This contract has mutual obligations binding on the parties thereto. Each party knows the obligation that it has assumed

and the consequences of failure or refusal to perform those requirements. Through its control of its members it can compel performance. Under such circumstances, a decree of a court of equity can be enforced against either party and in favor of the other. Grassi Contracting Co. *v.* Bennett, 174 App. Div. 244, 248, 160 N. Y. Supp. 279. An organization, having such power to require performance by individual members, can through its officers be compelled to exercise that power. There is in this contract a mutuality of obligation, and there is also a mutuality of remedy for its enforcement."

While in the recent case of *Textile Workers of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (decided June 3, 1957), the plaintiff therein, a labor union, invoked the Court to act, pursuant to Section 301 of the 1947 Act, and to order the defendant, the employer, to submit to arbitration, as provided by the terms of the collective bargaining agreement, entered into between the parties, it has an important bearing upon the instant controversy. It also contained a no-strike clause, similar to the one in the case at bar. The Court, in its opinion, in the said case quoted from the Senate and House Reports, which preceded the enactment of the statute. It appears in both reports that the primary concern was that unions and employers should both be bound to collective bargaining contracts and be governed by "the usual processes of the law."

The intent and purpose of the legislation, reported by the Senate, quoted in the said opinion, in substance, is as follows:

1. That the chief advantage which an employer can reasonably expect from a collective labor agreement is the assurance of uninterrupted operation during the term of the agreement.

2. That without some effective method of assuring freedom from economic warfare for the term of the agreement there is little reason why an employer would desire to sign such a contract.

3. That to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts.

It will be noted that the Senate Committee, so reporting, did not limit faithful performance to any particular breach or to any particular party, committing the breach. It clearly meant to insure faithful performance of the entire agreement to the end that there should be industrial peace. There could be no such assurance if either party, at will, might breach the contract by refusal to perform, and there be no adequate enforcement procedure.

The facts and the law warrant the remedy of specific performance, which embraces affirmative as well as negative acts. *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.*, 2 Cir., 126 F. 2d 978.

The plaintiff's motion is granted. The defendants' cross motions are denied. Settle order on two days' notice at which time the parties may submit their proposals as to security and preference of the trial.

WALTER BRUCHHAUSEN
U. S. D. J.

III. Court of Appeals Opinion—SIU Case (R. A 73-A 84):

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 123—October Term, 1957.

(Argued October 8, 1957 Decided November 21, 1957.)

Docket No. 24840

A. H. BULL STEAMSHIP CO.,
Plaintiff-Appellee,

v.

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,
Defendant-Appellant.

Before:

CLARK, *Chief Judge,* and
LUMBARD and MOORE, *Circuit Judges.*

Appeal from the United States District Court for the Eastern District of New York, Walter Bruchhausen, *Judge.*

Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, appeals from the grant of an injunction, *pendente lite,* restraining it from continuing a peaceful strike claimed to be in violation of its collective bargaining agreement with plaintiff, A. H. Bull Steamship Co. Reversed and remanded.

CLARK, *Chief Judge:*

A. H. Bull Steamship Co. brought suit below against the defendant Union seeking declaratory and injunctive relief and damages for the defendant's alleged breach of the collective bargaining agreement between the parties. Bull then moved for a preliminary injunction restraining the Union from continuing the peaceful strike then in progress, which constituted the alleged breach of contract. The trial court heard the motion on affidavits and briefs and entered an injunction *pendente lite* of substantial scope against continuance of the strike.[1] This appeal from the order of injunction followed.

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[1] The main provisions of the injunction are contained in the following paragraphs:

> "Ordered that, effective on October 1, 1957, at 5 P. M., Eastern Daylight Savings Time, defendant, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, Atlantic and Gulf District, AFL-CIO, its officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them, who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking, or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. BULL STEAMSHIP CO., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is
>
> "Further Ordered that the said defendant specifically perform its agreement to furnish the plaintiff with capable, competent, and physically fit persons when and where they are required, and of the ratings needed to fill vacancies necessitating the employment of Unlicensed Personnel, in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreement, * * *"

Defendant objects to the scope of the injunction as to parties defendant, as well as plaintiff, and to the findings incorporated in the opinion as made without a hearing for the presentation of testimony. We do not reach these issues.

The basic facts are not in dispute. Bull is an operator of ships engaged in interstate commerce. The Union represents unlicensed personnel aboard Bull's ships. The parties entered into a collective bargaining agreement effective October 15, 1956, which runs until September 30, 1958. The agreement provides in part that "[t]here shall be no strikes, lockouts, or stoppages of work" while its provisions are in effect. On June 17, 1957, the Union sought to renegotiate certain wages. These negotiations were unsuccessful and on August 19, 1957, the Union called a strike which still continued when the trial court issued its order. The parties disagree as to the scope of the no-strike clause and whether a strike over wages constitutes a breach of the agreement. We do not decide this issue because we hold that in any event the trial court exceeded its jurisdiction in issuing the preliminary injunction.

Section 4 of the Norris-LaGuardia Act of March 23, 1932, 29 U. S. C. § 104, deprives federal courts of jurisdiction to issue injunctions which prohibit peaceful strikes in cases "involving or growing out of any labor dispute." No one controverts that this is a peaceful strike. Section 13(c) of the Act, 29 U. S. C. § 113(c), provides:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

This case involves an impasse in renegotiation of wages. The Union maintains that the no-strike clause has no application to a strike for this purpose. Bull contends otherwise. But the basic controversy concerns wages—terms or conditions of employment—and thus, under § 13(c), this is a labor dispute. Nothing in the Act makes its provisions inapplicable where, after a labor dispute arises, one party

takes action which constitutes a breach of a contract between them. It is immaterial that the strike might be a breach of the Union's duty under the collective bargaining agreement or that the controversy itself might be determined by reference to it. *W. L. Mead, Inc.* v. *International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* 1 Cir., 217 F. 2d 6; *In re Third Avenue Transit Corp.,* 2 Cir., 192 F. 2d 971; *Alcoa S. S. Co.* v. *McMahon,* D. C. S. D. N. Y., 81 F. Supp. 541, affirmed 2 Cir, 173 F. 2d 567, certiorari denied 338 U. S. 821. Hence under § 4 of the Act, if still applicable, the trial court would lack jurisdiction to issue its preliminary injunction in the present labor dispute.

So much appears to be common ground between the parties and with the court. The real issue is whether or not there has been a repeal by implication of the Norris-LaGuardia Act. The court found that § 301 of the Taft-Hartley Act of June 23, 1947, 29 U. S. C. § 185, as interpreted in *Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448, authorized it to issue the injunction. The question thus presented is whether or not this later statute repeals the Norris-LaGuardia Act to the extent that federal courts will now have jurisdiction to enjoin a peaceful strike which constitutes a breach of a non-strike clause in a collective bargaining agreement. As Bull itself states, "[t]his Court's problem is to reconcile these two laws, in the light of the circumstances of this case and of the Supreme Court's decision of June 3, 1957 in *Textile Workers Union* v. *Lincoln Mills,* 353 U. S. 448."

Section 301(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce • • • may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Textile Workers Union of America v. *Lincoln Mills of Alabama, supra,* 353 U. S. 448, does clearly hold that this section is more than procedural and gives substantive rights grounded in a body of federal law which in a proper case may be enforced by equitable relief. There the collective bargaining agreement between the union and the employer included both an arbitration clause and a no-strike clause. After grievance procedures had been exhausted to no avail, the union demanded that the employer arbitrate differences concerning work loads and work assignments. The employer refused, and the union brought an action under this statute in the federal district court to compel the employer to arbitrate. The district court concluded that it had jurisdiction and ordered the employer to comply with the arbitration provisions. The Court of Appeals reversed this determination and the Supreme Court reversed the Court of Appeals. The Supreme Court held that § 301 "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements." 353 U. S. 448, 451.

But this case does not say that § 301 authorizes federal courts to issue injunctions when that remedy is clearly prohibited by the Norris-LaGuardia Act. The Court does hold, after an analysis of legislative history, to reach the conclusion just quoted, that the issuance of an order compelling arbitration was not prohibited by the Norris-LaGuardia Act. The Court reasoned that refusal to arbitrate is not protected conduct under § 4, 29 U. S. C. § 104, and is not the kind of conduct which had given rise to abuse of the power to enjoin. Indeed the Court found that § 8, 29 U. S. C. § 108, indicates a congressional policy favoring the settlement of labor disputes by arbitration. The Court next dealt with § 7, 29 U. S. C. § 107. This section, in addition to § 4, deprives federal courts of jurisdiction to issue injunctions in cases involving labor disputes unless the court makes

specific findings of fact and follows prescribed procedural requirements.[2] Citing Judge Magruder in *Local 205, United Electrical, Radio and Machine Workers of America (UE) v. General Elec. Co.*, 1 Cir., 233 F. 2d 85, 92, affirmed *General Elec. Co. v. Local 205, United Electrical, Radio and Machine Workers of America (U. E.)*, 353 U. S. 547, the

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[2] Sec. 7, 29 U. S. C. § 107, provides in part:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property . . ."

Court found these procedures "inapposite" and concluded that: "The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of § 7 of the Norris-LaGuardia Act." 353 U. S. 448, 458.[3]

In the case at bar the Union's conduct comes squarely within § 4 of the Norris-LaGuardia Act. This is a lawful and peaceful strike which Congress said a federal court may not enjoin. The Supreme Court in *Lincoln Mills* was concerned with a refusal to arbitrate—conduct not protected by § 4 and at odds with congressional policy. It did not involve a strike—the issue here. The ultimate question in *Lincoln Mills* was whether or not Congress by § 301 of the

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[3] Judge Magruder had concluded that:

"Basically, it is the language and background of the Norris-LaGuardia Act itself which point to the conclusion that the restrictions of § 7 do not have to be met as a prerequisite to jurisdiction to grant an order compelling arbitration. Section 7 requires certain preliminary allegations and findings: a threat of unlawful acts leading to substantial injury to property, greater injury to complainant in denying relief than to defendants in granting it, and the inability of the public officials charged with protection of property to furnish adequate protection. Procedural requirements include notice to said public officials and an undertaking for reimbursement by complainant and a surety. These provisions were obviously aimed to limit injunctions to cases involving violent or destructive acts. See also § 9. The enumerated requisites, which draw a logical line in relation to union conduct in strikes and picketing (and perhaps to some employer activities), are not at all compatible with the situation where one party merely demands that the other be compelled to arbitrate a grievance in accordance with a contract provision for arbitration, in which latter situation the required findings seldom, if ever, could be made either affirmatively or negatively. They just do not sensibly apply. We do not believe Congress intended § 7 in any case to be a snare and a delusion, holding out the possibility of jurisdiction but demanding for its exercise sworn allegations of inapposite facts." 233 F. 2d 85, 92.

Taft-Hartley Act authorized the federal courts to compel arbitration. The question here is whether or not Congress by that same provision intended to repeal the Norris-LaGuardia Act *pro tanto*. This is not the question which was before the Supreme Court.[4]

Prior to the Supreme Court's decision in *Lincoln Mills* both this Circuit and the First Circuit had agreed that § 301 did not impliedly repeal the Norris-LaGuardia Act. *Alcoa S. S. Co.* v. *McMahon, supra*, 2 Cir., 173 F. 2d 567, certiorari denied 338 U. S. 821; *W. L. Mead, Inc.* v. *International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, supra*, 1 Cir., 217 F. 2d 6; *Local 205, United Electrical, Radio and Machine Workers of America (UE)* v. *General Elec. Co., supra*, 1 Cir., 233 F. 2d 85, affirmed *General Elec. Co.* v. *Local 205, United Electrical, Radio and Machine Workers of America (U. E.)*, 353 U. S. 547. Two reasons for this conclusion were stressed. First, Congress in enacting § 301 did not expressly withdraw the restrictions of the Norris-LaGuardia Act and such withdrawal cannot be implied, particularly since in other sections of the same Act, viz., §§ 101(h), 208(b), and 302(e), 29 U. S. C. §§ 160(h), 178(b), and 186(e), Congress expressly lifted the bar of the Norris-LaGuardia Act to vest certain injunction powers in the courts when the National Labor Relations Board initiated the court proceedings. Thus, see *Alcoa S. S. Co.* v. *McMahon, supra*, D. C. S. D. N. Y., 81 F. 2d 541, 543, affirmed 2 Cir., 173 F. 2d 567, certiorari denied 338 U. S. 821; and see also *McCarroll* v. *Los Angeles County District Council of Carpenters*, 315 P. 2d 322 (Cal. 1957). Second, it is an accepted canon of construction that repeals by implication are not favored, especially where the previous statute (the Norris-LaGuardia Act) is not stale or forgotten, but is a "significant and tremendously important piece of legislation which the Con-

[4] Thus the California Supreme Court, per Judge Traynor, recently concluded in a post-*Lincoln Mills* decision that § 301 did not repeal the Norris-LaGuardia Act. *McCarroll* v. *Los Angeles County District Council of Carpenters*, 315 P. 2d 322 (Cal. 1957).

gress evidently had specifically in mind when it came to enact the Labor Management Relations Act in 1947." *W. L. Mead, Inc.* v. *International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, supra*, 1 Cir., 217 F. 2d 6, 9.

Bull maintains that these cases are distinguishable because neither involved a no-strike clause in a collective bargaining agreement. But this does not follow. The presence of the clause might make it easier to find a breach by a strike, but it can have no effect on the problem of statutory construction. The cases cited above involved strikes which allegedly breached collective bargaining agreements, and the recitals of legislative history therein contained are relevant to our problem here.

Bull contends that these authorities are in error. It maintains that the legislative history of § 301, especially as quoted in *Lincoln Mills,* requires the conclusion that Congress intended to repeal the Norris-LaGuardia Act to the extent that federal courts do have jurisdiction to enjoin violations of agreements not to strike. In that case, 353 U. S. 448, 452-456, Justice Douglas quotes passages from Senate and House Reports indicating that Congress intended to make collective bargaining agreements enforceable on unions as well as employers. Bull finds other congressional statements to the same effect. These statements, however, shed little light on how these agreements are to be enforced; and each is consistent with an interpretation that Congress intended merely to provide employers with a monetary recovery for a union's breach of a no-strike agreement and to impose certain sanctions against employees such as loss of status. Even though the Court found that an agreement to arbitrate is the *quid pro quo* for an agreement not to strike, this does not mean that because the former is specifically enforceable the latter is also. The Court found statements of congressional policy favoring the specific performance of arbitration agreements. Here we have a significant statute opposed to enjoining peaceful strikes.

Bull argues that both Houses agreed initially to allow federal courts to enjoin breaches of collective bargaining agreements. The House did it by including in its version of § 301 the following passage:

> "(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' shall not have any application in respect of either party."

The Senate did it by making violations of collective bargaining agreements unfair labor practices under § 8(b)(5), 29 U. S. C. § 158(b)(5), and empowering the National Labor Relations Board to seek injunctions to restrain unfair labor practices free from the prohibitions of the Norris-LaGuardia Act. Both provisions were eliminated in conference. Bull holds it unrealistic to believe that the conference deleted something on which both Houses previously had agreed. It contends that the difference in method was resolved by leaving the enforcement of collective bargaining agreements to the courts. It points to the following passage in the House Conference Report to support this contention:

> "The Senate amendment contained a provision which does not appear in section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. R. Rep. No. 510, 80th Cong. 1st Sess. 41-42.

Bull asserts that the phrase "usual processes of the law" comprehends the injunctive relief which both Houses had

separately approved, and thereby indicates that Congress intended to grant jurisdiction to enjoin breaches of collective bargaining contracts, including strikes.

We do not find this analysis persuasive. First, the phrase "usual processes of the law" seems to refer to processes in force when the Act was passed. At the time the Taft-Hartley Act was passed federal courts had no power to enjoin peaceful strikes. Second, conference committees may and sometimes do change statutory provisos agreed upon earlier by both Houses. An example is cited in *Lincoln Mills,* 353 U. S. 448, 452, where the Court points out that both Houses initially provided that failure to abide by an agreement to arbitrate would be an unfair labor practice. This was dropped by the conference. Finally, the House Conference Report does not indicate why the conference dropped the House provision making the Norris-LaGuardia Act inapplicable to suits brought under § 301. The Report makes it clear that the provision was dropped, however, for it states:

> "Section 302(e) of the House bill [the House's original form of § 301] made the Norris-LaGuardia Act inapplicable in actions and proceedings involving violations of agreements between an employer and a labor organization. Only part of this provision is included in the conference agreement." H. R. Rep. No. 510, 80th Cong., 1st Sess. 66.

The Report then goes on to say that the provision remains only in § 301(e), which relates to the determination of the question of agency. If the House provision stayed in the bill, the trial court undoubtedly would have had jurisdiction to enjoin the strike. But it was deleted without explanation, thus supporting the conclusion that Congress intended the Norris-LaGuardia Act to be applicable to suits brought under § 301.

The mandate of § 4 of the Norris-LaGuardia Act has been an expression of national policy for many years. If

this policy is to be changed it should be changed by Congress, and not by judicial legislation or inventiveness. It is our conclusion that Congress did not repeal § 4 of the Norris-LaGuardia Act by the enactment of § 301 of the Taft-Hartley Act. Under these circumstances the injunction order must be set aside.

Order reversed; action remanded for proceedings by the district court consistent with this opinion.

IV. Court of Appeals Opinion—Officers' Case (R. 129a-141a):

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 166—October Term, 1957.

(Argued October 28, 1957 Decided November 21, 1957.)

Docket No. 24874

A. H. BULL STEAMSHIP CO.,
Plaintiff-Appellee,

v.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,
Defendants-Appellants.

Before:

CLARK, *Chief Judge,* and
LUMBARD and MOORE, *Circuit Judges.*

Appeal from the United States District Court for the Eastern District of New York, Walter Bruchhausen, *Judge.*

National Marine Engineers' Beneficial Association, AFL-CIO and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO appeal from the grant of an injunction, *pendente lite,* restraining them from continuing peaceful strikes claimed to be in violation of their collective bargaining agreements with plaintiff, A. H. Bull Steamship Co. Reversed and remanded.

CLARK, *Chief Judge:*

A. H. Bull Steamship Co. brought suit below against the defendant unions seeking injunctive relief and damages for alleged breaches of collective bargaining agreements between plaintiff and each defendant. Bull alleged that the court had jurisdiction of the action as a case arising under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, and by reason of the diversity of citizenship of the parties. At the outset of the action Bull moved for an injunction *pendente lite* restraining the unions from continuing peaceful strikes then in progress and requiring them to furnish plaintiff with qualified licensed officers. These strikes and defendants' failure to provide personnel constitute the alleged breaches of contract. The defendants moved to dismiss the action for lack of jurisdiction. The trial court heard the motions on affidavits and briefs, and determined that Bull's allegations of jurisdiction raised a substantial federal question. It denied defendants' motions and issued an extensive injunction *pendente lite.*[1] Both unions appeal

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[1] The main provisions of the injnction are contained in the following paragraphs:

> "Ordered that, effective October 21, 1957 at 5:00 P. M. Eastern Daylight Saving Time, defendants National Marine Engineers' Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, their officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking or inciting, causing, inducing, or, in any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. H. Bull Steamship Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is
>
> "Further Ordered that each of said defendants specifically perform its respective agreement to furnish the plaintiff with capable, competent and physically fit licensed

(Footnote continued on next page)

from the orders and contend that the court had no jurisdiction to issue the preliminary injunction.

The facts are largely undisputed. Bull, a Delaware corporation, is an operator of ships engaged in interstate and foreign commerce. National Marine Engineers' Beneficial Association, AFL-CIO (MEBA), an unincorporated association, represents licensed engineering officers aboard Bull's ships. International Organization of Masters, Mates and Pilots, AFL-CIO (MM&P), a New York membership corporation, represents licensed deck officers, other than masters, aboard these ships. Bull and MEBA entered into a collective bargaining agreement on June 18, 1955, which will expire on June 15, 1958. Bull and MM&P entered into a similar agreement on July 1, 1955, which runs until September 30, 1958. Both agreements provide that "[t]here shall be no strikes, lockouts, or stoppages of work during the period of this agreement." Both agreements also provide for wage reviews after the first anniversary dates of the agreements. After the first anniversary dates each defendant notified Bull that it wished to renegotiate wages. Negotiations took place, but were unsuccessful; and on August 19, 1957, both unions called peaceful strikes to enforce their demands. The peaceful strikes continued until the trial court issued its order. The parties disagree whether or not these strikes constitute breaches of the contracts, the controversy mainly concerning whether or not the no-strike clauses are applicable to the wage-reopening clauses. Ex-

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engineering or deck officers when and where they are required and of the ratings needed to fill vacancies necessitating the employment of such Licensed Personnel in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreements; and it is

"Further Ordered that each of said defendants shall, so long as this Order remains in effect, promptly clear, validate or otherwise certify for employment aboard plaintiff's said vessels such qualified licensed officers who are members of the defendants' Unions as plaintiff may, from time to time, require."

cept to the limited extent discussed below, we find it unnecessary to ascertain whether or not the strikes actually constituted breaches of the contracts, since, even if they did, the trial court exceeded its jurisdiction in issuing the injunction.

Our recent decision in *A. H. Bull Steamship Co.* v. *Seafarers' International Union of North America*, 2 Cir., Nov. 21, 1957 (practically a companion case to this one) is in nearly all respects dispositive of this case. For, as we explain below, here also the issuance of an injunction is forbidden by the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.* Before reaching that point, however, we must examine the trial court's assumption of jurisdiction to issue the preliminary injunction.

Bull alleged in its complaint that the trial court had jurisdiction of the action as a case arising under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, and by reason of the diversity of citizenship of the parties. We first address ourselves to these allegations as they concern MEBA. MEBA is an unincorporated association, and all of its members must be citizens of states other than Delaware for diversity of citizenship to exist between it and Bull. *Levering & Garrigues Co.* v. *Morrin*, 2 Cir., 61 F. 2d 115, affirmed 289 U. S. 103; *Hettenbaugh* v. *Airline Pilots Ass'n International*, 5 Cir., 189 F. 2d 319. But the trial court did not premise its jurisdiction to issue the injunction on diversity grounds, for it found evidence that members of MEBA reside in the State of Delaware. Rather, it held that Bull's complaint presented a substantial question of federal jurisdiction under § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, which it could not decide until assuming jurisdiction over the controversy.

The substantial question involves an interpretation of § 301(a). That section provides:

> "Suits for violations of contracts between an employer and a labor organization representing em-

ployees in an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

MEBA contends that its collective bargaining contract with Bull is not a "contract between an employer and a labor organization representing employees," and thus § 301 does not give the district court jurisdiction to entertain the action. The Union maintains that all its members employed by Bull are "supervisors" and not "employees" as defined in the Act.[2] Moreover, it contends that it is not a

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[2] The Act, 29 U. S. C. § 152, defines "employees" and "supervisors" as follows:

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

"labor organization" as defined in the Act, because it does not represent statutory "employees."[3] If MEBA's factual allegations are correct, § 301 by its own terms is inapplicable to this action.

The substantial question thus resolves itself into one of fact: Are the members of MEBA covered by the collective bargaining contract with Bull "supervisors" within the definitions of the Act? If they are "supervisors," then MEBA is not a "labor organization representing employees" for the purposes of this action. This result follows even if some members of MEBA outside of this bargaining unit are "employees." Section 2(5) of the Act, 29 U. S. C. § 152(5), defines a "labor organization" as "any organization * * * in which employees participate and which exists for the purpose * * * of dealing with employers concerning * * * conditions of work." In order to effectuate Congress' avowed intention to remove supervisors from the protections of the National Labor Relations Act,[4] this definition must be interpreted to mean an organization of "employees" covered by the collective bargaining agreement in question and which exists for the purpose of dealing with *their* employer. Otherwise individuals excluded by the Act could join unions which represent some "employees" and gain the protections of the Act. Thus if MEBA were classified as a "labor organization" for purposes of this action simply because some of its members who are not within this bargaining unit are statutory "employees," then supervisors could gain the protections of

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[3] The Act, 29 U. S. C. § 152(5), defines a "labor organization" as follows:

> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

[4] See H. R. Rep. No. 245, 80th Cong., 1st Sess. 8, 13, 15, 17; Sen. Rep. No. 105, 80th Cong., 1st Sess. 3-5, 14.

the Act by joining either vertically integrated unions or unions which, in some parts of the country, represent non-supervisory personnel. This result was not intended by Congress.[5]

The trial court had extensive evidence before it on this question of fact. This evidence included affidavits of MEBA officials testifying that MEBA's members are supervisors and Bull's allegations in the state court proceeding that "[T]he classifications of persons represented by the MM&P and MEBA being supervisory personnel, the said picketing is not the result of a labor dispute as that term is defined in the Labor Management Relations Act of 1947, as amended." In addition, as discussed below, the trial court held the prohibitions of the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.*, inapplicable to this case because it was a dispute between an employer and supervisors (not "employees"). It is difficult for us to see how MEBA's members can be "supervisors" for purposes of the Norris-LaGuardia Act, and "employees" for purposes of the Taft-Hartley Act of 1947.

The trial court nevertheless decided to defer its factual determination of the jurisdictional issue until another time. It said:

> "The plaintiff claims that in various prior proceedings the defendant MEBA made admissions that it was a 'labor organization,' while, on the other hand, the said defendant challenges those statements or their effect and alleges that the individuals are 'supervisors,' within the meaning of the Act. As to the present application, it is not necessary to adjudicate these issues, other than to find, as this Court does find that the plaintiff presents a substantial Federal question and that this Court can decide the matter only after it has assumed jurisdiction over the controversy. The complaint herein alleges the violation of a single right, the right to have its agreement per-

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[5] H. R. Rep. No. 245, 80th Cong., 1st Sess. 15; Sen. Rep. No. 105, 80th Cong., 1st Sess. 3-4.

formed and a single claim for relief. Under these circumstances, the Court assumes jurisdiction of the action. *Strachman* v. *Palmer*, 177 F. 2d 427; *Hurn* v. *Oursler*, 289 U. S. 238 and *Brown* v. *Haldale Estates, Inc.*, 151 F. Supp. 118."

Hurn v. *Oursler*, 289 U. S. 238, and *Strachman* v. *Palmer*, 1 Cir., 177 F. 2d 427, 12 A. L. R. 2d 687, involve the doctrine of "pendent jurisdiction." Those cases hold that, where a federal court in disposing of a federal ground for relief hears evidence concerning the merits of a similar non-federal ground not otherwise subject to its jurisdiction, the court may dispose of the non-federal grounds. The doctrine finds its justification in avoiding wasteful relitigation of essentially the same issues, thereby serving the convenience of both the parties and the courts. But there is no such saving where, as here, there has been no trial on the merits and the doctrine is resorted to as a means of drawing wide areas of state law into federal cognizance for the issuance of labor injunctions on affidavits, contrary to federal principles. Although Bull argues for just such an extension of federal jurisdiction, it must be said that the trial court (beyond citing the two cases as above) never goes so far and nowhere indicates that it issued the preliminary injunction on some separate state ground supporting the relief. It only goes so far as to hold that where a breach of contract exists it may enjoin the breach *pendente lite* and defer deciding questions of its jurisdiction until trial. But even this we hold to be stepping outside its authority.

Undoubtedly, in a proper nonlabor case, a federal court may issue a preliminary injunction pending its determination of a substantial question of federal jurisdiction of the action. If this were not so a court would be powerless to maintain the *status quo* in a proper case due solely to defendant's attack on its jurisdiction. But substantial probability that the court will find a basis for federal jurisdiction, like the probability of a plaintiff's final success on the merits, is a crucial element necessary to justify

the issuance of an injunction *pendente lite*.[6] Here (postponing for a moment any consideration of the prohibitions of the Norris-LaGuardia Act) it appears quite likely that the court below has no jurisdiction under § 301 of the Taft-Hartley Act, 29 U. S. C. § 185, for the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits, and briefs below. And where the probability of jurisdiction is doubtful, the only justification for issuing the preliminary injunction is that Bull will suffer irreparable harm from a maintenance of the *status quo* during the period necessary to determine the jurisdictional question which far outweighs the possible harm to MEBA and the expressed public policy forbidding federal courts to issue labor injunctions. This possibility is not shown here. In fact Bull's delay in seeking this relief controverts the probability of irreparable harm during the few days it might take the trial court to resolve the jurisdictional question.

The foregoing discussion applies in the case of MM&P to the extent that the trial court rested the injunction against it on the probability of jurisdiction under § 301. Bull now strives to sustain the injunction on state grounds. But since we hold that the Norris-LaGuardia Act prohibited the issuance of this injunction we shall not here comment on the propriety of applying state substantive rules to this controversy if jurisdiction is rested on the diverse citizenship of Bull and MM&P.[7]

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[6] *Hall Signal Co.* v. *General R. Signal Co.*, 2 Cir., 153 F. 907; *Nadya, Inc.* v. *Majestic Metal Specialties*, D. C. S. D. N. Y., 127 F. Supp. 467.

[7] If there is a paramount federal law governing collective bargaining agreements between employers and employees in interstate commerce, as Justice Douglas seems to forecast in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, then it will control, whatever the ground of jurisdiction, whether diversity of citizenship, pendent jurisdiction, or federal question. See *Maternally Yours, Inc.* v. *Your Maternity Shop, Inc.*, 2 Cir., 234 F. 2d 538, 540 n. 1, 545-546, citing cases. [Judges Lumbard and Moore think it unnecessary to comment on this point at this time.]

The Norris-LaGuardia Act § 4, 29 U. S. C. § 104, prohibits the district court from issuing the injunction herein, for this is a case involving or growing out of a labor dispute as defined in § 13 of the Act, 29 U. S. C. § 113.[8] And Congress, in § 301 of the Taft-Hartley Act of 1947, 29 U. S. C. § 185, did not impliedly repeal the Norris-LaGuardia Act to the extent that federal courts may now enjoin breaches of no-strike clauses in collective bargaining contracts. See our full discussion of this issue in *A. H. Bull Steamship Co. v. Seafarers' International Union of North America*, 2 Cir., Nov. 21, 1957.

Bull argues, and the court below held, that § 14(a) of the Taft-Hartley Act of 1947, 29 U. S. C. § 164(a), makes the Norris-LaGuardia Act inapplicable to cases involving

[8] 29 U. S. C. § 113 provides the following definitions:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)."

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

employers and their supervisory employees. That section provides:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

Section 14(a) makes no explicit reference to the Norris-LaGuardia Act. The clause "no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, national or local, relating to collective bargaining" contained in § 14(a) obviously does not relate to the Norris-LaGuardia Act, which prohibits federal injunctions in labor dispute cases, whether the dispute is between employers and employees, employers and employers, or employees and employees. 29 U. S. C. § 113(a). The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or its state law equivalent. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them "to the basis which they enjoyed before the passage of the Wagner Act."[9] And no mention is made in the statute, the

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[9] Sen. Rep. No. 105, 80th Cong., 1st Sess. 28, comments on § 14 as follows:

> "This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as

(Footnote continued on next page)

reports, or the congressional debate indicating that the Norris-LaGuardia Act was henceforth to be inapplicable to peaceful strikes by supervisory personnel. Moreover, contrary to Bull's contentions, denying the injunction on the basis of the Norris-LaGuardia Act does not compel Bull to bargain collectively with its supervisors in contradiction of the purpose of § 14(a). Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining.

Order reversed; action remanded for proceedings by the district court consistent with this opinion.

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employees for the purpose of collective bargaining or organizational activity."

Senator Taft, explaining the status of supervisors under the Act, said during congressional debate:

"I shall try to summarize the changes which have been made. They are important. They make a substantial step forward toward the furnishing of equal bargaining power.

"The bill provides that foremen shall not be considered employees under the National Labor Relations Act. They may form unions if they please, or join unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." 93 Cong. Rec. 3952 (1947).

V. Court of Appeals Per Curiam—Both Cases (R. A 100-A 101; R. 161a-162a):

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

(Argued November 26, 1957—Decision November 27, 1957.)

[Same caption in each case.]

Before:

LUMBARD AND MOORE, *Circuit Judges.*

Motions by defendants-appellants for immediate issuance of mandate and cross-motion by plaintiff-appellee for stay pending application for certiorari. Denied.

PER CURIAM:

The motion of the defendant-appellant for the immediate issuance of the mandate of this Court, and the cross-motion of the plaintiff-appellee for a stay pending an application to the Supreme Court for a writ of certiorari are denied.

While we recognize the importance of the questions raised in this appeal, and also that the questions are not free from doubt, it seems to us that the Supreme Court or a Justice thereof should determine the matter of the continuance of the injunction beyond the usual period for the issuance of the mandate of this Court in view of the representations of plaintiff-appellee's counsel that their petition for certiorari is being prepared and will be presented promptly. Our denial of the plaintiff-appellee's motion for a stay is without prejudice to its seeking such a stay from the Supreme Court or a Justice thereof.

APPENDIX B

Statutory Provisions Involved

I. Labor Management Relations Act, 1947, Sections 1(b), 301 and 501; 29 U. S. C. §§ 141(b), 142(3), 185; 61 Stat. 136, 156, 161:

SEC. 1: *(Short Title and Declaration of Policy)*

. . . . .

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

SEC. 301: *(Suits by and against labor organizations):*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties,

without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

* * * * *

SEC. 501. When used in this Act—

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

II. National Labor Relations Act, as amended by Labor Management Relations Act, Sections 1, 2(3), 2(5), 2(7), 2(11), 14(a); 29 U. S. C. §§ 151; 152(3), 152(5), 152(7), 152(11), 164(a); 61 Stat. 136-7, 151:

SEC. 1.

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargain-

ing lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such com-

merce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 2. When used in this Act——

* * * * *

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning

grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

. . . . . .

(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

. . . . . .

(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

• • • • •

SEC. 14.

(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

III. Norris-LaGuardia Act, Sections 1, 2, 4, 7, 13; 29 U. S. C. §§ 101, 102, 104, 107, 113; 47 Stat. 70-73:

SEC. 1:

No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2:

In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection: therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 4:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

. . . . .

(d) By all lawful means aiding any person participating or interested in any labor dispute who is

being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

. . . . .

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 7:

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. . . .

SEC. 13:

When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated or-

ganization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

APPENDIX C

Relevant Provisions of Collective Bargaining Agreements

I. "Freightship Agreement between Seafarers' International Union, Atlantic & Gulf District, AFL-CIO, and . . . A. H. Bull Steamship Co. . . ." effective October 15, 1956; Contract Expires September 30, 1958.

(PREAMBLE)

This agreement is entered into this third day of October, 1956 by and between the Seafarers International Union of North America, Atlantic and Gulf District, affiliated with the American Federation of Labor and Congress of Industrial Organizations, hereinafter referred to as the Union and the undersigned company, and any of its subsidiary companies, which may be formed to operate ships in the off-shore, coastwise, or intercoastal trade, hereinafter referred to as the Company and remains in effect until September 30, 1958, and shall continue from year to year thereafter, unless either party hereto shall give written notice to the other of its desire to amend or terminate same, which notice shall be given at least 60 days prior to the expiration date. After such notice has been given, specific proposals must then be submitted within 10 days and negotiations commenced at a time which is mutually agreed upon. If, during the 60 days period, the parties fail to agree with reference to such proposals, the parties may, by mutual consent, extend this agreement for a specific period beyond such expiration date for the continuance of negotiations. Applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement. Monetary matters for the purpose of this section shall be the following: Wages, Overtime, Standby Rate. Longshore Rate, Tank Cleaning Rate, Explosives Handling Rate, Extra Meals Rate, Subsistence Rate and Room Allowance.

ARTICLE I: EMPLOYMENT

. . . . . .

SECTION 2. The Union agrees to furnish the Company with capable, competent, and physically fit persons when and where they are required, and of the ratings needed to fill vacancies necessitating the employment of Unlicensed Personnel, in ample time to prevent any delay in the scheduled departure of any vessel covered by this agreement. To assure maximum harmonious relations, and in order to obtain the best qualified employees with the least risk of a delay in the scheduled departure of any vessel covered by this agreement, the Company agrees to secure all Unlicensed Personnel through the Hiring Halls of the Union. . . .

ARTICLE II: GENERAL RULES

. . . . . .

SECTION 4. Stoppage of Work. There shall be no strikes, lockouts, or stoppages of work while the provisions of this agreement are in effect."

II. "Agreement between National Marine Engineers' Beneficial Association (Atlantic and Gulf Districts) and Atlantic and Gulf Dry Cargo and Passenger Vessel Companies and Agents" subscribed to by A. H. Bull Steamship Co. on June 18, 1955:

SECTION 1. *Recognition and Preference of Employment*—

—The Company recognizes the Association as the sole representative of its licensed engineers for the purpose of collective bargaining.

The Company agrees that when hiring any licensed engineer other than the Chief Engineer or a First Assistant Engineer, the employee shall be obtained through the offices of the Association; provided that engineers so named by the Association shall be qualified to fill the available positions, and further provided that the Company shall have the right to select men who the Company considers quali-

fied and satisfactory. Any engineer who has been discharged by a Company for cause in accordance with Section 4 of the agreement which has not been reversed by Section 2 of the agreement shall not be provided by the Association to the same Company for any available position. In case any person is rejected, the Association agrees to furnish a prompt replacement. . . .

. . . . . .

If the Company, with reasonable promptness after the occurrence of a vacancy, requests the Association to furnish a licensed engineer to fill such vacancy, and the Association is unable to do so in time to meet the requirements of the vessel, the Association shall immediately notify the Company which shall then be free to secure an engineer for this specific vacancy from any sources. However, preference shall be given to members of the Association in good standing, when available and qualified to fill the position.

. . . . . .

SECTION 2. *Grievance Procedure and Arbitration—*

(a) There shall be no strikes, lockouts or stoppages of work during the period of this agreement. All disputes relating to the interpretation or performance of this agreement which may arise between the parties hereto shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Association and two persons appointed by the Committee for Companies and Agents. The aggrieved party shall submit a statement of its grievance to the Board in writing at a joint meeting which shall be held within forty-eight (48) hours from the time when the services of the Board are invoked (Saturdays, Sundays and holidays excluded), and the other party shall have an opportunity to submit a written reply thereto. The Board shall endeavor to adjust the dispute, and should it fail to satisfactorily adjust said dispute, it shall, within seventy-two (72) hours from the time of the beginning of the first meeting of the Board on the

matter, submit the dispute to an Arbitrator selected in accordance with the provisions of paragraph (b) hereof.

. . . . . .

SECTION 39.—*Effective date and Duration of Agreement*—

(a) This agreement shall be effective as of 12:01 A.M., June 16, 1955, on all ships at sea or in port.

(b) The contract shall continue until terminated by either party upon sixty (60) days' written notice to the other party provided that the contract shall in no event be terminated prior to June 15, 1958.

During the period of this agreement either party may request two wage reviews upon 60 days' prior written notice, provided, however, that no wage review shall be held prior to June 15, 1956. Said wage review may include general wages, overtime and penalty rates, the additional compensation for Chief and non-watchstanding assistant engineer and the rate for relief engineers.

III. "Atlantic and Gulf Coast Master Dry Cargo and Passenger Agreement between International Organization of Masters, Mates and Pilots, Inc. and Dry Cargo and Passenger Companies" subscribed to by A. H. Bull Steamship Co. on July 1, 1955.

SECTION 1—*Effective Date and Expiration Date of Agreement.*

(a) Except as hereinafter provided this agreement shall be effective on all ships at sea or in port June 16, 1955.

(b) The contract shall continue to and including September 30, 1958.

(c) During the life of the agreement either party may request two wage reviews upon 60 days prior written notice provided, however, that no wage review shall be held prior to September 30, 1956. Said wage review may include general wages, over-

time and penalty rates, and additional compensation for Masters and non-watchstanding Licensed Deck Officers and the rate for Relief Deck Officers."

SECTION 2—*Recognition and Employment Clause.*

. . . . . .

(h) The Employer agrees that when hiring any Licensed Deck Officers other than the Master or Chief Officer, the employee shall be obtained through the offices of the Organization; provided that the Licensed Deck Officers so provided by the Organization shall be qualified to fill the available positions, and further provided that the Employer shall have the right to select men whom the Employer considers qualified and satisfactory. . . .

. . . . . .

(m) All new employees below the rank of Chief Mate shall be obtained through the office of the Organization in the port where the vacancies occur, if available.

In the event such office is unable to provide such replacement with reasonable promptness the Employer shall have the right to secure such replacement through any office of the Organization in any other port.

SECTION 3—*Grievance Procedure and Arbitration.*

(a) There shall be no strikes, lockouts or stoppages of work during the period of this Agreement. All disputes relating to the interpretation or performance of this Agreement which may arise between the parties to this Agreement shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Organization and two persons appointed by the Committee for Companies and Agents. The parties shall submit any such dispute for decision by the Board and they agree to be bound by the decision of a majority thereof. The Board shall agree to such rules for procedure as it may deem necessary.

. . . . . .

It is understood that in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety. The Organization undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line.